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AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			JASTRZAB, KRISANNE MARIE	
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1744

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/600,280
Filing Date: June 20, 2003
Appellant(s): LAKE ET AL.

MAILED

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GROUP 1700

Gregory Nelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/16/2006 appealing from the Office action
mailed 9/16/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. The rejection of claim 4 under 35 USC 112, 2nd paragraph, for

being vague and indefinite in reciting "the housing comprising absorbent pad a flexible portion". The phraseology is nonsensical and refers to structure previously set forth in claim 1, but fails to provide distinction therefrom.

(7) Claims Appendix

A substantially correct copy of appealed claim 4 appears on page 1 of the Appendix to the appellant's brief. The minor errors are as follows: the term "and" prior to "a flexible" is not recited in the examined copy of the claims.

(8) Evidence Relied Upon

5,641,464	Briggs, III et al.	6-1997
5,722,537	Sigler	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This claim is found to be vague and indefinite as amended. It recites the "housing comprises absorbent pad a flexible portion". The absorbent was already recited in claim 1, so it is unclear as to what is being further limited in this claim.

Claim Rejections - 35 USC § 103

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigler U.S. patent No. 5,722,537 in view of Briggs, III et al., U.S. patent No. 5,641,464.

Sigler teaches a portable device for decontaminating a pacifier constructed with a closeable receptacle containing an absorbent material loaded with disinfectant solution and configured to engagingly receive the nipple of a pacifier. The device is provided with hook or lanyard means capable of connecting it to the pacifier even when not in use, as well as a removable cover. See column 1, lines 11-17, and 50-65, column 2, lines 40-50, column 3, lines 1-10 and lines 65-68, and column 4, lines 1-2.

Briggs, III et al., teach the known and expected application of disinfecting the head of a stethoscope with a disinfectant solution with an interlocking means constructed of a plurality of flexible members interacting to secure the head of the stethoscope for liquid disinfectant contact without allowing escape of the liquid. Briggs, III et al., further teaches the desirability of a compact system and clearly cites compounds for disinfecting and sterilizing the head of a stethoscope. See column 1, lines 10-17 and lines 41-60, column 2, lines 7-17, column 3, particularly lines 29-36 and lines 50-63 and the figures.

It would have been well within the purview of one of ordinary skill in the art to configure the device of Sigler for access to the absorbent, with the engagement structure as taught in Briggs, III, such as to accommodate the head of a stethoscope for disinfection because it would provide an effective, compact, portable system which can be carried with the stethoscope user for immediate, on-site disinfection between uses while eliminating the need for a potentially flammable propellant, minimizing the

probability of spillage and user contact with the decontaminating agent by containment within the absorbent pad in the housing.

With respect to claims 2-3 and 24, Briggs, III et al., clearly teaches an iris structure that interlockingly engages the medical apparatus by elastically deforming inwardly. See Fig 1 and column 3, lines 29-35.

With respect to claim 8, just as different sized attachment means are taught in Sigler for differently sized configurations, it would have been obvious to one of ordinary skill in the art to have access to different sized devices in the same location for treating articles of different size or shape.

With respect to claims 9-11, it would have been well within the purview of one ordinary skill in the art to include use indicia on the portable device in order to determine the type of disinfectant applicable for re-loading the device.

With respect to claims 12-19, both Sigler and Briggs, III et al., teach that the use of any one or combination of known sterilizing/disinfecting agents is acceptable, with Briggs, III et al., exemplifying the use of chlorine containing quaternary ammoniums, thus it would have been obvious to one of ordinary skill in the art to employ any known agent expected to have sterilizing or disinfecting capabilities, including conventional agent such as glutaraldehydes, alcohols, iodophors, peroxygen compounds or phenolics. See column 3, lines 8-10 of Sigler and column 3, lines 50-58 of Briggs, III et al.

With respect to claim 20, it would have been well within the purview of one of ordinary skill in the art to include indicator means identifying whether or not the disinfectant had contacted the stethoscope to assure the user that disinfection had

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occurred, and that disinfectant was still available for use, the conventionality of such is well recognized as evidenced by the use of iodine or betadine compounds which leave residual coloration identifying use.

With respect to claim 22, it would have been well within the purview of one of ordinary skill in the art to utilize the hook and lanyard means taught by Sigler to connect the device to the stethoscope while the stethoscope is being used because that connection would ensure fully accessible, point of use application without the interruption of the user traveling to the location of the disinfecting device, and because those means are clearly capable of functioning in that manner and both Sigler and Briggs, III et al., teach the desirability of point-of-use access.

(10) Response to Argument

Appellant argues that the prior art of record fails to teach the engagement of the medical apparatus as required by the instant claims, and further argues that there is no mention of engagement between the pacifier and the disinfectant container housing of Sigler. The Examiner would first point out that Sigler is not relied upon to provide the engagement structure and would secondly point to column 3, lines 29-36 of Briggs, III et al., which clearly teaches that the housing is provided with a flexible, resilient **closeable** (emphasis added) X-shaped or iris-shaped diaphragm and that the stethoscope head is inserted into the interior of the housing therethrough and the diaphragm closes around the tube of the stethoscope sealing the egress of spray from the container. The Examiner would assert that this interaction is clearly "engaging".

Appellant further argues that because the structure of Briggs, III et al., is flexible, it therefore requires yielding and thus is insufficient to “engage”, however, the Examiner would disagree and point out that Appellant’s own claims define the engagement structure as “elastic” which is synonymous with flexible. See instant claim 3.

Appellant further argues that Briggs, III et al., lacks any absorbent pad, and the Examiner would point out that Briggs, III et al., is not relied upon for such pad, nor is such an assertion made. Sigler clearly provides the absorbent pad in the proper combination of the two references.

Appellant also argues that “interlocking structure” and the “elastically deformable, inwardly directed” limitations of claims 2 and 3 are completely lacking in Briggs, III et al., however, the Examiner would strongly disagree, referring again to the iris-shaped diaphragm shown in Fig. 1 and described in column 3, because the description of the activity of that structure clearly presents an interlocking engagement with the diaphragm closed around the tube of the stethoscope and noting that “interlocking” requires to join something closely, which is the structural relationship described in column 3.

Appellant argues that Briggs, III et al., fails to teach the structure for attaching the decontamination device to the medical device or lanyard means of instant claims 5 and 6, however, the Examiner would point out that Sigler is properly relied upon for such structure and that structure is fully capable of functioning as recited in apparatus claims 5 and 6.

Appellant further argues that claims 12-19 call for a particular decontaminating compound with an absorbent pad, and the Briggs, III et al., does not have an absorbent

pad. The Examiner would reiterate that Briggs, III et al., is not being relied upon to provide an absorbent pad. The combination is properly provided with an absorbent pad by Sigler and carrying a decontaminant agent, with both references teaching that any known agent can be used and further with Briggs, III et al., citing some specific examples corresponding to those claimed by Appellant.

Appellant asserts that Sigler is non-analogous art, however, the Examiner would disagree. The Examiner would maintain that Sigler is clearly in the same field of endeavor as the instant invention and that of Briggs because they are all directed to point of use sterilization/disinfection of objects subject to human contact which can transmit bacterial contamination. Appellant furthers this assertion by stating that there is no mention of any medical applications in Sigler, however, the Examiner would point out that in the Description of the Prior Art (column 1, lines 20-50) in which Sigler describes the most pertinent prior art showing a state of the art, all of the references referred to are for sterilization of thermometers which are clearly medical applications to be used in the same environment as a stethoscope.

Appellant further asserts that Sigler does not solve the problem solved by the invention, namely, "directly engaging or interlocking the decontamination device to the medical apparatus in such a way the engaging act itself results in decontamination, and the decontamination device stays engaged with the medical device until use, thereby preventing accidental contamination", however, the Examiner would take the position that the above quoted language exceeds that actually required by the instant claims and would assert that the properly combined references meet all of the claimed limitations.

Appellant further argues that Sigler does not teach engagement or interlocking as required by claims 1 and 3, respectively, but the Examiner would maintain that Sigler is not relied upon for such engagement or interlocking, nor is such asserted in the rejection of the claims.

Appellant also argues with respect to claims 5-6, that while Sigler does teach attachment means having the same structure as that in the instant claims, the use thereof to attach to the medical apparatus is not taught, however, the Examiner would point out that claims 5-6 are apparatus claims and that the structure of those claims is clearly set forth in Sigler and is fully capable of functioning as claimed.

Appellant continues to argue that neither Briggs, III et al., nor Sigler teach structure for removably engaging the housing to a portion of a medical apparatus, nor do they teach that such structure is "interlocking". Appellant asserts that the common definition of "interlock" is "to lock together:UNITE". The Examiner would maintain that the common definition of "interlock" is also "to become engaged or interrelated with one another" and would strongly assert that the structure in Briggs, III et al., performs that function. The diaphragm flexibly allows entry of the head of the stethoscope into the housing then sealingly closes around the tube connected to it, thereby interlockingly, engaging the stethoscope head. The reference further supports this by teaching that the head of the stethoscope must be removed from the device and this action would not be required if the head were not engaged. The Examiner would also set forth that Appellant's specification fails to provide a definition for "engaged" or "interlocked" and

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such is not provided by the recitation referred to in the Brief at page 11 (referring to paragraph [0005] of the instant specification).

Finally, Appellant argues Sigler requires movement of the pacifier within the device to achieve decontamination and the invention does not, however, the Examiner would maintain that decontamination with the device of the properly combined references would not either and would assert that the device of the properly combined references would provide an engagement structure as in Briggs, III et al., which would place the head of a stethoscope in contact with an absorbent pad within the housing as in Sigler.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Neither an **Evidence Appendix** nor a **Related Proceeding(s) Appendix** were included in Appellant's Brief. The Brief is accepted and it is assumed by the Examiner that Appellant meant to include both with a statement of "None".

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



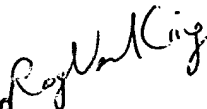
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April 26, 2006

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